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December 11, 2000

Magalie Roman Salas
Secretary
Federal Communications Commission
445 Twelfth St., S.W.
Washington, D.C. 20554

**Re: Federal-State Joint Board on Universal Service, CC
Docket No. 96-45**

Dear Ms. Salas:

The Reply Comments on the Rural Task Force Recommendation filed on November 30, 2000 by the Competitive Universal Service Coalition inadvertently contained an editing error. The error is corrected in the attached filing. Please disregard the original filed version and accept the attached corrected version in its place.

We regret this error. Please contact me if you have any questions.

Respectfully submitted,

David Sieradzki

David L. Sieradzki
Counsel for the Competitive Universal
Service Coalition

Enclosures

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Federal-State Joint Board on) CC Docket No. 96-45
Universal Service)

COMPETITIVE UNIVERSAL SERVICE COALITION
REPLY COMMENTS ON THE
RURAL TASK FORCE RECOMMENDATION

COMPETITIVE UNIVERSAL
SERVICE COALITION

Association for Local Telecommunications Services
AT&T Wireless Services
Competitive Telecommunications Association
Nucentrix Broadband Networks, Inc.
Personal Communications Industry Association
Smith Bagley, Inc.
U.S. Cellular Corporation
Verizon Wireless
VoiceStream Wireless Corporation
Western Wireless Corporation
Wireless Communications Association

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November 30, 2000

CORRECTED VERSION: December 11, 2000

TABLE OF CONTENTS

	Page
I. COMPETITIVE NEUTRALITY AND FUNDING PORTABILITY MUST CONTINUE TO GUIDE RURAL UNIVERSAL SERVICE POLICY	3
A. Regulatory Oversight is Needed to Ensure that Study Area Disaggregation and Targeting of Support Are Structured Pro-Competitively	4
B. The Commission Should Expeditiously Adopt RTF Recommendations to Administer the High-Cost Fund in a More Competitively Neutral Manner	11
1. The Funding Lag for Competitive ETCs Must be Eliminated.....	11
2. The Per-Line Funding Available in Each Geographic Location Must be Transparent to Facilitate Competitive Entrants' Business Planning.....	13
3. The RTF's Recommendation to Fund Wireless ETCs Based on Their Customers' Residential or Business Locations Should Be Adopted.....	14
C. The RTF's Recommendations Must Not Be Allowed to Create New Impediments to Competitive Entry.....	16
1. States Must Not Be Allowed to Deny ETC Designation Based on the Change In Funding Methodology Triggered By Competitive Entry	16
2. Policy on Sales of Rural Exchanges Must Not Harm Competitive ETCs.....	17
3. To Ensure Competitive and Technological Neutrality, No New Advanced Service or Information Service Requirements Should Be Added to the ETC Criteria in Section 54.101.....	18
4. The Universal Service Fund Must Remain Competitively Neutral and Must Not Be Used to Subsidize Rural ILECs' "Stranded Costs"	20

II. FUNDING LEVELS MUST NOT GROW EXCESSIVELY	21
A. The Fund Should Grow by No More than the Amount Recommended by the RTF	22
B. The FCC and the Joint Board Should Avoid Creating Artificial Incentives for Non-Rural ILECs to Sell Exchanges	23
C. High Cost Fund III Must be Explicit and Portable to Competitive ETCs, and Limited to Revenues Definitively Identified as Implicit Support	24
D. The Record is Not Sufficient to Determine Whether and How Much to Increase Funding for Deployment of Advanced or Information Services	27
III. CONCLUSION	28

EXECUTIVE SUMMARY

The Competitive Universal Service Coalition ("CUSC") applauds the efforts of the Rural Task Force ("RTF") in bringing together varied and competing interests and forging a solid compromise proposal. CUSC is eager to work with the Joint Board and the Federal Communications Commission to craft rules that are consistent with the following fundamental principles:

1. The universal service funding structure must be competitively neutral and must allow competitive entrants to serve rural, high-cost communities currently served by rural telephone companies.
2. The universal service fund must be targeted and economically efficient, and must not be allowed to grow to an excessive amount that would place an undue burden on consumers.

Toward these goals, CUSC supports adoption of the RTF's recommendations as a package. CUSC submits that the Joint Board and the Commission should reject parties' arguments for changes to the RTF proposals that would violate these principles, but in light of these arguments, CUSC submits a few suggestions of its own for minor modifications to the RTF proposal.

First, CUSC generally supports disaggregation of rural telephone companies' study areas and targeting of support. But it will be absolutely critical for regulators to carefully oversee the details of how disaggregation is implemented to ensure that incumbent carriers do not abuse the process to cross-subsidize their own services and freeze out competitive entry.

Second, CUSC strongly supports the RTF's pro-competitive recommendations to: (1) eliminate the funding lag for competitive eligible telecommunications carriers ("ETCs"); (2) enable all parties to easily determine how

much funding per line is available in each geographic location; and (3) fund wireless ETCs based on their customers' residential or business locations. Similarly, the RTF proposal must *not* be implemented in ways that create new impediments to competitive entry. Thus, states must not be permitted to rely on the change in funding methodology triggered by competitive entry as an excuse to deny ETC designation. Moreover, the FCC rules on ETC criteria must not be expanded to include unwarranted requirements relating to advanced or information services.

Finally, to protect consumers around the country from excessive universal service contribution burdens, the overall size of the high-cost fund must not be allowed to grow by more than the amount recommended by the RTF. Thus, rural incumbents' arguments for potentially vast increases in universal service funding upon the sale of rural exchanges must be rejected. The Commission must also structure "High Cost Fund III" in a manner that removes implicit subsidies from rural ILECs' access charges and makes all funding explicit and portable, but does not give rural ILECs an unwarranted revenue guarantee, which would be improper in an increasingly competitive environment.

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
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Federal-State Joint Board on)	CC Docket No. 96-45
Universal Service)	

**COMPETITIVE UNIVERSAL SERVICE COALITION
REPLY COMMENTS ON THE
RURAL TASK FORCE RECOMMENDATION**

The Competitive Universal Service Coalition ("CUSC"), 1/ by counsel and in response to the Public Notice in the above-captioned proceeding hereby submits this Reply in response to the comments filed on the *Rural Task Force Recommendation*. 2/

CUSC applauds the efforts of the Rural Task Force ("RTF") in bringing together varied and competing interests and forging a solid compromise proposal. CUSC is eager to build on the RTF's efforts to assist the Joint Board and the FCC in crafting rules to address the universal service support needs of the rural, insular

1/ The Competitive Universal Service Coalition includes the following companies and associations: Association for Local Telecommunications Services; AT&T Wireless Services; Competitive Telecommunications Association; Nucentrix Broadband Networks, Inc.; Personal Communications Industry Association; Smith Bagley, Inc.; U.S. Cellular Corporation; Verizon Wireless; VoiceStream Wireless Corporation; Western Wireless Corporation; and the Wireless Communications Association.

2/ *Federal-State Joint Board on Universal Service Seeks Comment on Rural Task Force Recommendation; Pleading Cycle Established*, CC Docket No. 96-45, Public Notice, FCC-00J-3 (rel. Oct. 4, 2000), seeking comment on *Rural Task Force Recommendation to the Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, rel. Sept. 29, 2000 ("RTF Recommendation").

and high-cost communities currently served by rural telephone companies. CUSC also recognizes that universal service funding policies for rural telephone companies may be different from those for non-rural companies, at least in the short-term. Nonetheless, CUSC strongly believes that universal service entry and funding policies, including the designation of competitive Eligible Telecommunications Carriers (“ETCs”), must not unfairly disadvantage competitive carriers seeking to enter areas served by rural telephone companies. Therefore, it is critical that the FCC and the Joint Board act to enable competitive ETCs to offer new universal service options to consumers in rural areas.

In these reply comments, we explain why: (1) competitive neutrality and funding portability must continue to be guiding principles for universal service reform; (2) the Joint Board and the FCC should reject certain parties’ arguments to implement the RTF proposal in ways that might create new impediments to competitive entry; and (3) the RTF’s recommendations regarding the size and growth of high-cost universal service funding levels should constitute a ceiling or maximum level, and rural incumbent local exchange carrier (“ILEC”) arguments for unlimited increases in funding levels must be rejected. CUSC generally supports the RTF’s recommendations and believes they should be adopted as a package. Nonetheless, given that most of the rural ILECs argued for substantial changes to the package, CUSC respectfully submits a few minor modifications that its members would support.

I. COMPETITIVE NEUTRALITY AND FUNDING PORTABILITY MUST CONTINUE TO GUIDE RURAL UNIVERSAL SERVICE POLICY

When Congress enacted the Telecommunications Act of 1996, one of its chief goals was to introduce competition in the provision of local telephone service to consumers in all parts of the country. When consumers have choice, Congress reasoned, prices will decline and new, innovative services will develop more rapidly. With Congress' mandate in mind, the Joint Board and the Commission have adopted competitive neutrality and funding portability as fundamental principles guiding the new universal service paradigm. ^{3/} It is beyond debate that these principles of competitive neutrality and funding portability must be retained, and the RTF correctly recognized that its recommendations had to be consistent with these overarching goals. ^{4/}

The Joint Board and the Commission must therefore reject NTCA's and the Western Alliance's misguided arguments for abandoning the fundamental goal of funding portability. ^{5/} Without portable funding, local competition will never develop in areas currently served by rural telephone companies. Indeed, the non-portable universal service system in effect prior to the enactment of the 1996

^{3/} *Federal-State Joint Board on Universal Service*, Recommended Decision, 12 FCC Rcd 87 (Joint Board 1996) ("*First Recommended Decision*"); *Federal-State Joint Board on Universal Service*, Report & Order, 12 FCC Rcd 8776 (1997) ("*First Report & Order*").

^{4/} RTF Recommendation at 7, 14-15, 33, 37; *Mission Statement, Objectives and Principles for Developing a Recommendation*, Rural Task Force Principles for Developing Recommendations (Dec. 12, 1998) at www.wutc.wa.gov/rtf.

^{5/} National Telephone Cooperative Ass'n ("NTCA") at 10-11; Western Alliance at 13.

Act was a barrier to entry. The 1996 Act was intended to eliminate such competitive restraints, as the Commission has recognized. ^{6/}

As discussed below, the Joint Board and the Commission should:

(1) structure study area disaggregation in a manner that provides sufficient regulatory oversight to preclude anti-competitive behavior; (2) adopt reforms to the administration of high-cost funding to improve its competitive neutrality; and (3) reject policy proposals that might create impediments to competitive entry.

A. Regulatory Oversight is Needed to Ensure that Study Area Disaggregation and Targeting of Support Are Structured Pro-Competitively

CUSC generally supports disaggregation of rural telephone companies' study areas to target funding more accurately to higher cost areas. As the RTF correctly recognizes, accurate targeting of high-cost support benefits competitive entrants, incumbents, and consumers. ^{7/} As the Commission has recognized, a necessary corollary of facilitating disaggregation of rural telephone company study areas for funding purposes is to disaggregate those study areas for ETC designation and service area purposes, pursuant to the definition of "service areas" for ETCs in

^{6/} See *First Report & Order*, 12 FCC Rcd at 8776, ¶ 601. See also *Western Wireless Petition for Preemption of Statutes and Rules Regarding the Kansas Universal Service Fund*, Memorandum Opinion & Order, File No. CWD 98-90 (rel. Aug. 28, 2000) ("Kansas USF Portability Ruling").

^{7/} RTF Recommendation at 33-34.

Section 214(e)(5) of the Act. ^{8/} If study areas are not disaggregated for ETC designation and service area purposes, then all ETCs in those areas, including both ILECs and their competitors, would be obligated to serve customers in all parts of the study area, and disaggregation and targeting of support would be pointless. ^{9/}

CUSC strongly supports disaggregating and accurately targeting support, for both funding and ETC purposes, because those measures eliminate artificial barriers to competitive entry in the highest-cost areas and avoid creating artificial entry incentives in relatively low-cost portions of rural telephone companies' study areas. Such measures also ensure that competitors that serve a relatively high-cost portion of a study area receive a level of funding that appropriately reflects the cost of serving a specific geographic area, rather than an unreasonably low amount of funding based on the average cost of the incumbent's entire study area. Targeting also makes it possible to reduce the overall amount of funding, because it reduces the amount of funding to relatively low-cost portions of a study area. A lower overall amount of funding safeguards the interests of consumers across the country, who ultimately pay for such support.

^{8/} *First Report & Order*, 12 FCC Rcd at ¶¶ 25, 129; 47 U.S.C. § 214(e)(5). See RTF Recommendation at 34 note 62 (citing that statutory provision).

^{9/} See, e.g., *Petition for Agreement with Designation of Rural Company Eligible Telecommunications Carrier Service Areas and for Approval of the Use of Disaggregation of Study Areas for the Purpose of Distributing Portable Federal Universal Service Support*, Memorandum Opinion & Order, 15 FCC Rcd 9921 (Com. Car. Bur. 1999); *Wyoming Public Service Commission Files for Waiver of the Non-Rural High-Cost Universal Service Support Targeting Requirements Included in Sections 54.309 and 54.311 of the Commission's Rules*, Public Notice, CC Docket No. 96-45, DA 00-1019 (rel. May 8, 2000).

On the other hand, if incumbents are allowed to engage in gamesmanship with the disaggregation process, inaccurate targeting has the potential to be profoundly anti-competitive. In particular, if an incumbent could control how funding is distributed within a study area, absent sufficient regulatory oversight, then in cases where a competitive ETC is able to serve only certain portions of the study area, the incumbent could direct an excessive amount of funding to the areas where the competitor is unable to provide service.

CUSC is concerned about the risk that ILECs could game the process to direct excessive support to areas not served by competitors, and inadequate support to areas where competitive entry is occurring. This concern is *not* simply motivated by an interest by competitive entrants to be able to “cherry pick” universal service support for low-cost portions of rural telephone company study areas. ^{10/} Inaccurate and unreasonable methodologies for targeting support could disadvantage carriers – and consumers – in the highest-cost areas as well, as the following example illustrates. Consider a hypothetical rural ILEC with a study area that includes two wire centers, which we can call “Mountains” and “Plains,” where the need for high-cost support, based on the relative cost of service, is twice

^{10/} Some ILECs misleadingly imply that disaggregation and targeting would protect consumers in relatively high-cost portions of a study area from “cherry picking” by competitive ETCs that attempt to serve only the lower cost portions of a study area. *See, e.g.,* Western Alliance at 13. Of course, disaggregation and targeting are not needed to prevent “cherry picking;” all ETCs have a statutory obligation to serve all customers in their designated “service areas.” 47 U.S.C. § 214(e)(1). Nonetheless, CUSC believes that disaggregation of study areas and targeting of support are in the public interest, for the reasons described in the text.

as high in “Mountains” as in “Plains.” Instead of providing an averaged \$15 per line of high-cost support throughout the study area, it would be more accurate to provide \$20 per line in “Mountains” and \$10 per line in “Plains.” Now consider a wireless carrier that seeks to provide service as a competitive ETC in “Mountains,” where it has CMRS licenses, but not in “Plains,” where it does not have licenses. The ILEC could successfully thwart competitive entry by refusing to disaggregate and target support at all, or by inaccurately targeting support so that, for example, only \$17 per line is available in “Mountains” and \$13 per line is provided in “Plains.” The result would be an anti-competitive form of cross-subsidization, in violation of Sections 254(e) and (k) of the Act.

Thus, it is critically important to control the process of disaggregation and targeting to ensure that it is cost-based and competitively neutral. CUSC has no objection to the general principles for disaggregation set forth in the RTF Recommendation, 11/ or to the so-called “Path 2,” in which state commissions would review, analyze, and approve disaggregation plans under their standard procedures. 12/ However, CUSC has reservations about “Path 1,” in which a rural ILEC could exercise the option *not* to target high-cost support. 13/ Such a decision

11/ RTF Recommendation at 34.

12/ *Id.* at 35. Significantly, though, this would be another area where authority over implementation of the *federal* universal service program would be delegated to the *state* regulators. States would have to be required to discharge this delegated authority consistent with pro-competitive federal standards.

13/ *Id.*

should be made by regulators, not incumbent carriers. Indeed, in some cases, a prospective entrant may want to propose disaggregation and targeting, and a state commission should be free to adopt such a proposal, consistent with Sections 214(e)(5) and 254, even over the objection of an ILEC.

More significantly, CUSC is concerned that “Path 3,” in which a rural ILEC would “self-certify” a method for geographic disaggregation and the plan would take effect immediately, 14/ contains the potential for significant mischief unless adequate controls are in place. To be sure, self-certification in many contexts can reduce the delays and administrative costs stemming from unnecessary regulatory procedures, 15/ and CUSC would not rule it out altogether in the area of disaggregation zone plans. For such a scheme to work, however, sufficient controls must be in place to prevent anti-competitive gamesmanship by incumbent carriers. 16/ In particular, CUSC strongly urges the Commission to include the following provisions in its rules in order to preclude anti-competitive manipulation of disaggregation plans:

14/ *Id.* at 36.

15/ In particular, CUSC would strongly support a self-certification process for the designation of ETCs.

16/ CUSC particularly objects to draft rule 54.308(k) submitted by the Rural Leadership Coalition. Rural Leadership Coalition *Ex Parte* Filing, CC Docket No. 96-45, filed Nov. 10, 2000, at 8-9. That draft rule does no more than restate the general language in the RTF Recommendation without providing adequate specificity for the structure of a self-certified disaggregation plan.

- For self-certified plans, support must be disaggregated based on geographic zones no smaller than wire centers, except in cases where a state commission has made a prior determination that a different level of disaggregation is appropriate. Carriers seeking to disaggregate support below the wire center level must submit their disaggregation plans for approval by the state commission.
- The ratio of the high-cost support (HCL, LSS, LTS) in each of the zones must be consistent with the ratio of the difference between the cost of service in each of the zones (see the following bulletpoint) and an appropriate national cost benchmark (such as \$27, which is 135% of the national average cost of \$20 per line, which the FCC adopted for non-rural high-cost support). 17/
- For purposes of demonstrating the cost ratios described in the preceding bullet point, the proponent need not submit a cost study. However, it must submit detailed work papers demonstrating the cost levels in each of the zones either based on publicly available data on embedded cost (*e.g.*, ARMIS) or based on data from one of the generally-accepted forward-looking economic cost models.

CUSC disagrees with the commenters who argue that rural ILECs should be able, with little or no regulatory oversight, to establish three or more geographic zones *below* the wire center level, 18/ and respectfully disagrees with the RTF's recommendation to allow rural ILECs to establish up to two zones below the wire center level with no regulatory oversight. Without regulatory oversight, there

17/ *Federal-State Joint Board on Universal Service*, Ninth Report & Order and Eighteenth Order on Reconsideration, 14 FCC Rcd 20432, 20470, ¶ 68 (1999) ("*Ninth Report & Order*"). The source of the \$20 average forward-looking cost figure is the "cost benchmark" tab, cell C-105, on the "*Wirecenter Workbook*" spreadsheet, available at http://www.fcc.gov/Bureaus/Common_Carrier/Public_Notices/1999/d991165b.xls. See *Common Carrier Bureau Releases Revised Spreadsheet For Estimating Universal Service Support Using Proposed Input Values In The Forward-Looking Cost Model*, CC Docket Nos. 96-45, 97-160, DA 99-1322 (released July 2, 1999).

18/ See, *e.g.*, NTCA at 15-17; Nebraska Rural Independent Cos. at 4-6; South Dakota Independent Telephone Coalition ("SDITA") at 6-8; TDS Telecomm. Corp. at 6; Western Alliance at 13-14.

would be no restrictions on the ILECs' ability to establish multiple sub-wire center funding zones with indeterminate boundaries about which no competitive carrier could obtain complete information, let alone compete against. 19/ As discussed above, ILECs also could target support in an anti-competitive manner, retaining funding in excess of that justified by cost differences to sub-wire center zones where little or no competition is expected, and sending inadequate amounts of funding to sub-wire center zones where competitors may be present.

In sum, while disaggregation and targeting of support below the study area level is in the public interest, the Joint Board and the Commission must ensure that it is implemented in a pro-competitive manner. To achieve this goal, sufficient regulatory oversight over these plans must be in place – or, for self-certification to work, the rules governing it must be adequately detailed and yield results that are publicly verifiable, so as to preclude anti-competitive manipulation. The Commission must not delegate its authority over the structure of the funding program to the incumbent carriers who have the most to gain from anti-competitively abusing that structure. 20/

19/ Cf. RTF Recommendation at 37-38 (need for greater transparency); *see infra* § I.B.2. It is already virtually impossible for competitors to obtain information about non-rural ILECs' "UNE Zone" boundaries used for distributing Interstate Access-Related Support pursuant to the CALLS plan. CUSC understands that USAC is in the process of remedying this problem.

20/ By way of comparison, when the Commission adopted "density pricing zones" for implementing geographically deaveraged access rates, it required ILECs to obtain the FCC's approval of their zone plans prior to filing tariffs implementing deaveraged pricing. *Expanded Interconnection With Local Telephone Company Facilities*, 7 FCC Rcd 7369, 7455,

B. The Commission Should Expeditiously Adopt RTF Recommendations to Administer the High-Cost Fund in a More Competitively Neutral Manner

1. The Funding Lag for Competitive ETCs Must be Eliminated

CUSC strongly agrees with NECA and the RTF that the Commission should take steps to make “the time lag between provision of service and receipt of support as short as technically and administratively feasible.” 21/ The delay in disbursement of universal service funding to competitive ETCs is among the most significant barriers to competitors seeking to participate in the universal service program. This is particularly true given the uncertainty surrounding the timing of a new entrant ETC’s initial data submission and receipt of funding upon being designated. The Commission must take steps to remedy this situation.

The original universal service rules adopted in 1997 contained a “quirk” (probably created inadvertently by the drafters of the rules) whereby funding was provided immediately to ILECs but delayed to competitive ETCs by as long as two years, and ILECs could update their data quarterly but competitive ETCs could do so only once a year. 22/ More recently, the Commission attempted to

¶ 180 (1992), *rev’d on other grounds sub nom. Bell Atlantic Tel. Cos. v. FCC*, 24 F.3d 1441 (D.C. Cir. 1994).

21/ National Exchange Carrier Ass’n (“NECA”) at 8; RTF Recommendation at 38.

22/ In the *First Report & Order*, the Commission specifically decided to make high cost support “portable, or transferable, to competing eligible telecommunications carriers when they win customers from ILECs or service previously unserved customers.” 12 FCC Rcd at ¶ 273. However, the Commission’s resultant implementing rules used inconsistent methodologies regarding the reporting of the number of lines for ILECs (47 C.F.R. §§ 36.611 &

remedy this anti-competitive rule provision, ^{23/} but it is still not clear whether the remedy applies to funding in rural telephone company areas as well as funding in non-rural areas. Moreover, it is unclear from the rules when a newly designated ETC may make its first submission of data and begin receiving support – *i.e.*, may a new entrant ETC submit data (and begin receiving support) immediately upon designation, or must the carrier wait for the next mandatory filing deadline provided in the rules (which, in the case of ETCs serving rural telephone company service areas, presently comes around on only an annual basis July 31 of each year ^{24/})?

The Commission must make it clear that, even if rural ILECs are required to report their line counts only once a year and have an option to do so more frequently, competitive ETCs have the option to make both their initial line count report and subsequent reports at least quarterly. The Commission should also specify that new entrant ETCs may make their first report immediately after being designated and need not wait until the next annual filing deadline. The Commission should do this either explicitly through new rules or an amendment to Section 54.307, or it should specifically clarify that such reports are already permitted under Section 54.307(c) as it currently stands.

36.612) and competitive ETCs (47 C.F.R. § 54.307). *See also* Western Wireless Petition for Clarification or Rulemaking, CC Docket No. 96-45 (filed Oct. 15, 1998).

^{23/} *Ninth Report & Order*, 14 FCC Rcd at 20478, 20480, ¶¶ 87, 92; *Federal-State Joint Board on Universal Service*, Twentieth Order on Reconsideration, CC Docket No. 96-45, FCC 00-126, ¶¶ 17-18 (rel. Apr. 7, 2000).

^{24/} *See* 47 C.F.R. § 54.307(c).

In any case, even as remedied, there is still a minimum six to nine month lag between the time that service is provided and the date that funding is received. This lag, like the lag affecting carriers' contributions identified by AT&T, 25/ is an unnecessary administrative glitch that could impede competition. Thus, CUSC strongly supports the RTF's recommendation to shorten the interval between the provision of service and receipt of universal service funding by using data based on the average line count for each calendar quarter (*i.e.*, beginning of quarter plus end of quarter divided by two) data, which is likely to be available within a month after the end of the quarter. 26/ Eliminating the lag will ensure that all incumbent and competitive carriers are treated in a fair and non-discriminatory manner.

2. The Per-Line Funding Available in Each Geographic Location Must be Transparent to Facilitate Competitive Entrants' Business Planning

In a competitive environment, all carriers must know precisely what is required of them, what support will be available, and how that support will be distributed. In this regard, CUSC supports the RTF's conclusion that amounts of support available to an ETC must be transparent. Like the RTF, CUSC believes that the amount of universal service support for any particular area must be

25/ AT&T at 4-5.

26/ RTF Recommendation at 38. In its order adopting the "CALLS" plan, the Commission adopted a methodology similar to the one CUSC proposes it adopt here. *Cf. Access Charge Reform*, Sixth Report & Order, CC Docket Nos. 96-262, 94-1, 99-249, and 96-45, FCC 00-193, at ¶¶ 207-210 (rel. May 31, 2000) ("*CALLS Order*").

“explicit, readily available and easily identifiable.” 27/ Notably, no party opposes this proposal.

Information on the amount of per-line support must be publicly available, easily accessible and provided in an easy-to-read format. This will allow potential competitors to obtain and analyze that information and to develop pre-entry business plans armed with all of the facts. In addition, it will allow competitive entrants to maintain and modify their plans as necessary. When a carrier can accurately project its costs, its strategic business planning will proceed more smoothly, and the likelihood that its costs will be reduced increases. When the carrier’s costs are lower, it is better able to pass along those savings to its customers. Transparent per-line funding information will benefit both carriers and consumers. Therefore, CUSC supports the RTF’s conclusion on this important issue. 28/

3. The RTF’s Recommendation to Fund Wireless ETCs Based on Their Customers’ Residential or Business Locations Should Be Adopted

The RTF recommendation proposes allowing a wireless ETC to use its customer’s residential or business location as the basis for determining the

^{27/} *Competition and Universal Service*, Rural Task Force White Paper 5, p. 18 (rel. Sept. 2000) at <http://www.wutc.wa.gov/rtf>.

^{28/} RTF Recommendation at 37-38.

disaggregation zone in which the customer resides for purposes of universal service support implementation. ^{29/} CUSC wholeheartedly supports this recommendation.

The National Telephone Cooperative Association (“NTCA”) provides no support for its argument that the wireless customer’s address may not have a relationship to the situs of the service and the costs of providing that service. ^{30/} To the contrary, CUSC submits that a cursory review of any wireless carrier’s Form 499 filing would demonstrate that people use their wireless phones predominantly for local calls in the same geographic area in which they live and work. Moreover, there is no practical alternative to the RTF proposal, other than denying support to customers of wireless carriers – a result the Commission has already rejected. ^{31/}

Notably, Congress recently enacted a statute that takes precisely the same approach to wireless customer locations as the RTF recommendation. In the recently passed Mobile Telecommunications Sourcing Act (“Sourcing Act”), ^{32/} Congress determined that, for taxing purposes, all of a single customer’s mobile telecommunications services are deemed to stem from the customer’s residence or primary business location. Congress intended to simplify the manner in which

^{29/} RTF Recommendation at 38.

^{30/} NTCA at 11-12.

^{31/} See e.g., *First Recommended Decision*, 12 FCC Rcd at 124, ¶ 170; First Report & Order, 12 FCC Rcd at ¶ 145; *Federal-State Joint Board on Universal Service*, Seventh Report & Order and Thirteenth Order on Reconsideration, 14 FCC Rcd 8078, 8113, ¶ 72 (1999) (“*Seventh Report & Order*”).

^{32/} Mobile Telecommunications Sourcing Act, Pub. L. 106-252 (July 28, 2000) (to be codified at 4 U.S.C. §§ 116 - 126).

mobile telecommunications services are taxed by setting one specific address from which the tax could be assessed. ^{33/} This simple and intuitive system for determining wireless customer locations will have the same practical benefits in the universal service context.

C. The RTF's Recommendations Must Not Be Allowed to Create New Impediments to Competitive Entry

The RTF's recommendations, commendably, are designed to promote competitive neutrality. Nonetheless, some its proposals, particularly if implemented in the manner advocated by some parties, might inadvertently have the opposite effect. CUSC addresses a few issues raised by the RTF report that might make it more difficult for new entrants to achieve ETC status. As the Commission knows, ETC designation is the key that opens the door to competitive entry in high-cost and rural areas. ^{34/}

1. States Must Not Be Allowed to Deny ETC Designation Based on the Change In Funding Methodology Triggered By Competitive Entry

CUSC does not disagree with the RTF recommendation that a change in the methodology for determining a rural ILEC's funding should be triggered by a

^{33/} See S. Rep. No. 106-326, 106th Cong., 2d Sess. (2000).

^{34/} "A new entrant faces a substantial barrier to entry if the incumbent [LEC] is receiving universal service support that is not available to the new entrant for serving customers in high-cost areas No competitor would ever reasonably be expected to enter a high-cost market without first knowing whether it is also eligible to receive such support." *Federal-State Joint Board on Universal Service; Western Wireless Petition for Preemption of an Order of the South Dakota Public Utilities Commission*, Declaratory Ruling, CC Docket No. 96-45, FCC 00-248, ¶¶ 12-13 (rel. Aug. 10, 2000).

competitive ETC entry into the market (as evidenced by the competitive ETC submitting subscriber line data to USAC). ^{35/} If the Commission adopts this recommendation, however, it should also make it perfectly clear that the fact that a competitive ETC's entry triggers this methodology change is not a basis for denying a competitive entrant's petition for ETC designation. ^{36/}

2. Policy on Sales of Rural Exchanges Must Not Harm Competitive ETCs

The Commission should make it clear that competitive carriers that have already been designated as ETCs, or that have already submitted requests for designation, should not be affected by the sale of telephone exchanges from one carrier to another. The RTF recommends changes to Section 54.305 that would, among other things, make it more likely that transferred exchanges would be treated as a separate study area. ^{37/} As discussed below, CUSC does not object to the adoption of the RTF's proposed "safety valve" funding mechanism. ^{38/} If the Commission adopts that recommendation, however, it must also clarify that exchange sales or transfers to smaller ILECs do not affect preexisting designations

^{35/} RTF Recommendation at 25-26.

^{36/} Compare Bristol Bay Tel. Coop. at 3 (funding methodology change should be triggered based on competitive ETC achieving specified market share, rather than simply reporting lines to USAC) (nine other ILECs filed virtually identical comments) (hereinafter cited as "Bristol Bay *et al.*").

^{37/} RTF Recommendation at 29-30. See also *id.*, Appendix D (indicating that transferred exchanges acquired by an entity would be designated as a new study area).

^{38/} See *infra* section II.B.

of competitive ETCs, nor should they trigger a need for ETC applicants to make rural “public interest” showings under Section 214(e) of the Act for an existing ETC designation or for new applications to serve the transferred area. ^{39/} Thus, even if transferred exchanges are designated as new “rural telephone company” study areas for funding purposes pursuant to the RTF’s proposed “safety valve” mechanism, they should not be treated as “rural” for ETC designation purposes. ^{40/} This would preclude the anomalous and anti-competitive result of an exchange sale forcing competitive ETCs (or carriers that have already applied for ETC status) to return to the designating commission for a public interest finding, or requiring such carriers to serve additional areas, *i.e.*, the balance of that rural telephone company’s study area. This is also consistent with the pro-competitive policies underlying study area disaggregation.

3. To Ensure Competitive and Technological Neutrality, No New Advanced Service or Information Service Requirements Should Be Added to the ETC Criteria in Section 54.101

The Commission and the Joint Board must be guided by the RTF’s recognition that “an ETC should not lose universal service support, or be denied

^{39/} See 47 U.S.C. § 214(e)(2), (6) (requiring that “[b]efore designating an additional [ETC] for an area served by a rural telephone company, the [relevant] commission shall find that the designation is in the public interest”).

^{40/} Such new study areas clearly cannot be treated as “rural” under Section 153(37)(D) of the Act, which requires that the carrier must have been in existence at the time the 1996 Act was adopted. Conceivably, such a carrier could be treated as rural for funding purposes if it qualifies under Sections 153(37)(A), (B) or (C) of the Act.

ETC designation because it cannot provide access to advanced services, as currently defined, if it otherwise provides all of the supported services.” 41/ Accordingly, there is no basis at this time for changes to Section 54.101, the Commission rule setting forth the criteria that ETC applicants must meet to receive ETC designation. 42/ While the objective of avoiding barriers to the provision of advanced services is commendable, neither the record developed by the RTF nor that supplied by commenting parties in the instant proceeding demonstrates any support for augmenting the list of supported services. 43/

Instead, to ensure competitive and technological neutrality, the Commission must retain the existing criteria as a “floor,” not a “ceiling.” Moreover, it must be sure that competitive entrants, who will no doubt utilize an array of varied technologies, receive identical funding amounts as their incumbent counterparts. The Commission should be extremely wary about taking any steps that might make it even more difficult for carriers to qualify as ETCs. Reducing the number of eligible universal service providers would diminish competition in rural and high-cost areas, which would restrict the options for consumers in those areas and force them to pay higher prices.

41/ RTF Recommendation at 22, n. 42.

42/ 47 C.F.R. § 54.101.

43/ Although the Regulatory Commission of Alaska indicated, in general terms, its support for universal service funding for advanced services, it did not indicate that the list of supported services should be expanded. See Comments of the Regulatory Comm’n of Alaska at 4.